

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARJORIE CHILDRESS,

Plaintiff,

v.

No. _____

NATIONAL CONGRESS OF EMPLOYERS INC.,
BENEFYTT TECHNOLOGIES INC. f/k/a
HEALTH INSURANCE INNOVATIONS INC.,
and Jane Does 1-5,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, defendant Benefytt Technologies Inc. f/k/a Health Insurance Innovations Inc. (“Benefytt”), by and through counsel, submits this Notice of Removal for the purpose of removing the above-entitled action from the Second Judicial District Court, Bernalillo County, New Mexico, where it is now pending, to the United States District Court for the District of New Mexico. Benefytt states the following grounds for removal:

1. Plaintiff Marjorie Childress (“Plaintiff”) filed a complaint in the Second Judicial District Court, Bernalillo County, New Mexico, captioned *Marjorie Childress v. National Congress of Employers Inc., Benefytt Technologies Inc. f/k/a Health Insurance Innovations Inc., and Jane Does 1-5*, No. D-202-CV-2020-06929 (“State Court Action”). *See Complaint for Violations of the Unfair Practices Act and the Telephone Consumer Protection Act* (the “Complaint”). A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

2. Benefytt is named as a defendant in the Complaint. Benefytt was served with copies of the Summons and the Complaint on January 6, 2021 by service upon its registered agent, Corporation Service Company.

3. Among other things, Plaintiff alleges that Benefytt violated the federal Telephone Consumer Protection Act (“TCPA”), 27 U.S.C. § 227, and its implementing regulations. *See Exhibit A ¶¶ 23, 27, 59(f-g), and 70-73.*

4. In and by asserting the aforementioned allegations, Plaintiff has sought relief under the federal TCPA and its implementing regulations. *See id. ¶¶ 70-73.*

5. Plaintiff also alleges violations of the federal Telemarketing Sales Rule, 15 C.F.R. § 310.1, *et seq.*, which implements, in part, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. *See id. ¶¶ 23, 27, 59(f-g), 65, and 67.*

6. Based on Plaintiff’s claims, this Court has original “federal question” jurisdiction over this action pursuant to 28 U.S.C. § 1331 (general federal question jurisdiction provision).

7. As a civil action founded upon a claim or right arising under the substantive laws of the United States of America, this action is properly removable to this Court pursuant to 28 U.S.C. § 1441(a).

8. The state court in which the State Court Action was commenced is within this Court’s district and, therefore, the State Court Action is properly removable to this Court under 28 U.S.C. §§ 1441(a) and 1446.

9. This Notice of Removal is being timely filed within thirty (30) days of receipt by Benefytt, through service of process or otherwise, of a copy of the Complaint, which is the initial pleading setting forth the claim for relief upon which the State Court Action is based. 28 U.S.C. § 1446(b).

10. Benefytt will serve and certify service of copies of this Notice of Removal to the Plaintiff as required by 28 U.S.C. § 1446(d).

11. In compliance with D.N.M.LR-Civ. 81.1(a), Benefytt is filing herewith true and correct copies of all other filings, records, and proceedings from the State Court Action, attached hereto as **Exhibit B**.

12. Benefytt will file a copy of this Notice of Removal with the Clerk of the Second Judicial District Court, Bernalillo County, pursuant to 28 U.S.C. § 1446(d). A true and correct copy of *Notice to State Court of Removal to Federal Court* is attached hereto as **Exhibit C**.

For all of the reasons stated, Benefytt respectfully requests that the above-referenced action currently pending against it in the Second Judicial District Court of Bernalillo County, New Mexico be removed to this Court, which shall assume full jurisdiction over it as provided by law, and it further requests that this Court enter any other orders as may be necessary and proper.

DATED: February 5, 2021.

Respectfully,

HOLLAND & HART LLP

/s/ Larry J. Montañño

By _____

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**ATTORNEYS FOR BENEFYTT TECHNOLOGIES INC.
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